

Attorneys for Defendant
FIELD NATION LLC

FERERRI D'ANGELO, individually and on behalf of all others similarly situated, Plaintiff,)	Case No. 15cv1899-CAB-MDD
)	Hon. Cathy Ann Bencivengo
v.)	
ITOK, INC., a corporation; and FIELD NATION, LLC, a limited liability company)	ANSWER TO SECOND AMENDED COMPLAINT
)	
Defendants.)	

Each allegation in the Second Amended Complaint is denied except to the extent any allegations are expressly admitted. Each numbered paragraph in this answer responds to the corresponding numbered paragraphs in the Second Amended Complaint.

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Los Angeles, CA 90071

ALLEGATIONS REGARDING THE NATURE OF ACTION

1. Paragraph 1 contains Plaintiff's characterization of the action and not allegations of fact for which an answer is necessary. To the extent an answer is required to paragraph 1, Defendant denies the statements in paragraph 1.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

3. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

4. Paragraph 4 contains Plaintiff's characterization of the action and not allegations of fact for which an answer is necessary. To the extent an answer is required to paragraph 4, Defendant denies the statements in paragraph 4.

ALLEGATIONS RELATED TO JURISDICTION AND VENUE

5. Defendant admits that this Court has federal Question subject matter jurisdiction over the FLSA claims and that D'Angelo was a California resident while Field Nation is a limited liability corporation located in Minnesota. Defendant is without sufficient information or knowledge to either admit or deny the remaining allegations in paragraph 4 and on that basis denies the same.

6. Admit.

7. Admit.

8. Admit.

PARTIES

9. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

10. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this

1 paragraph and therefore denies them.

2 11. Defendant Field Nation is a limited liability company located in the
3 state of Minnesota that does business in the United States. Except as specifically
4 admitted herein, Defendant lacks sufficient information or belief, or understanding
5 of the vague allegations, to either admit or deny the remaining allegations of
6 paragraph 11 and on that basis denies the same.

7 12. Deny.

8 **FACTUAL BACKGROUND**

9 13. Defendant Field Nation is unable to admit or deny these allegations as
10 they refer to alleged communications between Plaintiff and Defendant Bask
11 Technology, Inc. (“Bask”), and not communications with Defendant Field Nation,
12 as a result, Defendant Field Nation denies the allegations contained in paragraph
13 13 of the Second Amended Complaint.

14 14. Defendant is without sufficient knowledge or information sufficient to
15 form a belief as to the truth of each and every allegation contained in this
16 paragraph and therefore denies them.

17 15. Defendant is without sufficient knowledge or information sufficient to
18 form a belief as to the truth of each and every allegation contained in this
19 paragraph and therefore denies them.

20 16. Defendant is without sufficient knowledge or information sufficient to
21 form a belief as to the truth of each and every allegation contained in this
22 paragraph and therefore denies them.

23 17. Defendant is without sufficient knowledge or information sufficient to
24 form a belief as to the truth of each and every allegation contained in this
25 paragraph and therefore denies them.

26 18. Defendant Field Nation admits it issued money to Plaintiff received
27 from Defendant Bask and provided Plaintiff with a 1099. Defendant Field Nation
28 is without sufficient knowledge or information sufficient to form a belief as to the

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1 truth of each and every remaining allegation contained in this paragraph and
2 therefore denies them.

3 19. Defendant Field Nation admits that it supplied Plaintiff with a 1099.
4 Except as admitted herein, Defendant lacks sufficient information or belief to
5 either admit or deny the remaining allegations and on that basis denies the same.

6 20. Defendant is without sufficient knowledge or information sufficient to
7 form a belief as to the truth of each and every allegation contained in this
8 paragraph and therefore denies them.

9 **CLASS ALLEGATIONS**

10 21. Paragraph 21 contains Plaintiff's characterization of his action and not
11 allegations of fact for which an answer is necessary. To the extent an answer is
12 required to paragraph 21, Defendant denies that class or collective treatment of this
13 matter is appropriate, and is without knowledge or information sufficient to either
14 admit or deny the remaining allegations and on that basis denies the same.

15 22. Deny.

16 23. Deny.

17 24. Deny.

18 25. Deny.

19 26. Deny.

20 27. Deny.

21 28. Deny.

22 **CLAIMS FOR RELIEF**

23 **FIRST CLAIM FOR RELIEF**

24 29. Defendant incorporates by reference its responses to the allegations in
25 the preceding paragraphs to the same extent the Second Amended Complaint
26 incorporates by reference its allegations in the preceding paragraphs of the Second
27 Amended Complaint.

28 30. Defendant is without sufficient knowledge or information sufficient to

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1 form a belief as to the truth of each and every allegation contained in this
2 paragraph and therefore denies them.

3 31. Defendant is without sufficient knowledge or information sufficient to
4 form a belief as to the truth of each and every allegation contained in this
5 paragraph and therefore denies them.

6 32. Defendant is without sufficient knowledge or information sufficient to
7 form a belief as to the truth of each and every allegation contained in this
8 paragraph and therefore denies them.

9 33. Defendant is without sufficient knowledge or information sufficient to
10 form a belief as to the truth of each and every allegation contained in this
11 paragraph and therefore denies them.

12 34. Defendant is without sufficient knowledge or information sufficient to
13 form a belief as to the truth of each and every allegation contained in this
14 paragraph and therefore denies them.

15 35. Paragraph 35 contains Plaintiff's characterization of his action and not
16 allegations of fact for which an answer is necessary. To the extent an answer is
17 required to paragraph 35, Defendant denies each and every allegation contained in
18 this paragraph.

19 36. Defendant is without sufficient knowledge or information sufficient to
20 form a belief as to the truth of each and every allegation contained in this
21 paragraph and therefore denies them.

22 **SECOND CLAIM FOR RELIEF**

23 37. Defendant incorporates by reference its responses to the allegations in
24 the preceding paragraphs to the same extent the Second Amended Complaint
25 incorporates by reference its allegations in the preceding paragraphs of the Second
26 Amended Complaint.

27 38. Defendant is without sufficient knowledge or information sufficient to
28 form a belief as to the truth of each and every allegation contained in this

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1 paragraph and therefore denies them.

2 39. Defendant is without sufficient knowledge or information sufficient to
3 form a belief as to the truth of each and every allegation contained in this
4 paragraph and therefore denies them.

5 40. Defendant is without sufficient knowledge or information sufficient to
6 form a belief as to the truth of each and every allegation contained in this
7 paragraph and therefore denies them.

8 41. Paragraph 41 contains Plaintiff's characterization of his action and not
9 allegations of fact for which an answer is necessary. To the extent an answer is
10 required to paragraph 41, Defendant denies the allegations.

11 42. Defendant is without sufficient knowledge or information sufficient to
12 form a belief as to the truth of each and every allegation contained in this
13 paragraph and therefore denies them.

14 **THIRD CLAIM FOR RELIEF**

15 43. Defendant incorporates by reference its responses to the allegations in
16 the preceding paragraphs to the same extent the Second Amended Complaint
17 incorporates by reference its allegations in the preceding paragraphs of the Second
18 Amended Complaint.

19 44. Defendant is without sufficient knowledge or information sufficient to
20 form a belief as to the truth of each and every allegation contained in this
21 paragraph and therefore denies them.

22 45. Defendant is without sufficient knowledge or information sufficient to
23 form a belief as to the truth of each and every allegation contained in this
24 paragraph and therefore denies them.

25 46. Defendant is without sufficient knowledge or information sufficient to
26 form a belief as to the truth of each and every allegation contained in this
27 paragraph and therefore denies them.

28

FOURTH CLAIM FOR RELIEF

47. Defendant incorporates by reference its responses to the allegations in the preceding paragraphs to the same extent the Second Amended Complaint incorporates by reference its allegations in the preceding paragraphs of the Second Amended Complaint.

48. Paragraph 48 contains Plaintiff's characterization of his action or legal conclusions and not allegations of fact for which an answer is necessary. To the extent an answer is required to paragraph 48, Defendant denies the allegations.

49. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

50. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

51. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

52. Paragraph 51 contains Plaintiff's characterization of his action or legal conclusions and not allegations of fact for which an answer is necessary. To the extent an answer is required to paragraph 51, Defendant denies the allegations.

53. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

FIFTH CLAIM FOR RELIEF

54. Defendant incorporates by reference its responses to the allegations in the preceding paragraphs to the same extent the Second Amended Complaint incorporates by reference its allegations in the preceding paragraphs of the Second Amended Complaint.

1 55. Defendant is without sufficient knowledge or information sufficient to
2 form a belief as to the truth of each and every allegation contained in this
3 paragraph and therefore denies them.

4 56. Defendant is without sufficient knowledge or information sufficient to
5 form a belief as to the truth of each and every allegation contained in this
6 paragraph and therefore denies them.

7 **SIXTH CLAIM FOR RELIEF**

8 57. Defendant incorporates by reference its responses to the allegations in
9 the preceding paragraphs to the same extent the Second Amended Complaint
10 incorporates by reference its allegations in the preceding paragraphs of the Second
11 Amended Complaint.

12 58. Paragraph 58 contains a restatement of California Labor Code Section
13 221. To the extent an answer is required to paragraph 58, Defendant denies the
14 allegations.

15 59. Defendant is without sufficient knowledge or information sufficient to
16 form a belief as to the truth of each and every allegation contained in this
17 paragraph and therefore denies them.

18 60. Defendant is without sufficient knowledge or information sufficient to
19 form a belief as to the truth of each and every allegation contained in this
20 paragraph and therefore denies them.

21 61. Defendant is without sufficient knowledge or information sufficient to
22 form a belief as to the truth of each and every allegation contained in this
23 paragraph and therefore denies them.

24 **SEVENTH CLAIM FOR RELIEF**

25 62. Defendant incorporates by reference its responses to the allegations in
26 the preceding paragraphs to the same extent the Second Amended Complaint
27 incorporates by reference its allegations in the preceding paragraphs of the Second
28 Amended Complaint.

63. Paragraph 63 contains a restatement of California Labor Code Section 226. To the extent an answer is required to paragraph 63, Defendant denies the allegations.

64. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

65. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

EIGHTH CLAIM FOR RELIEF

67. Defendant incorporates by reference its responses to the allegations in the preceding paragraphs to the same extent the Second Amended Complaint incorporates by reference its allegations in the preceding paragraphs of the Second Amended Complaint.

68. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

69. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

70. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in this paragraph and therefore denies them.

NINTH CLAIM FOR RELIEF

71. Defendant incorporates by reference its responses to the allegations in the preceding paragraphs to the same extent the Second Amended Complaint incorporates by reference its allegations in the preceding paragraphs of the Second Amended Complaint.

1 72. Defendant is without sufficient knowledge or information sufficient to
2 form a belief as to the truth of each and every allegation contained in this
3 paragraph and therefore denies them.

4 73. Defendant is without sufficient knowledge or information sufficient to
5 form a belief as to the truth of each and every allegation contained in this
6 paragraph and therefore denies them.

7 74. Defendant is without sufficient knowledge or information sufficient to
8 form a belief as to the truth of each and every allegation contained in this
9 paragraph and therefore denies them.

10 75. Paragraph 75 contains Plaintiff's characterization of his action or legal
11 conclusions and not allegations of fact for which an answer is necessary. To the
12 extent an answer is required to paragraph 75, Defendant denies the allegations

13 76. Defendant is without sufficient knowledge or information sufficient to
14 form a belief as to the truth of each and every allegation contained in this
15 paragraph and therefore denies them

16 77. Defendant is without sufficient knowledge or information sufficient to
17 form a belief as to the truth of each and every allegation contained in this
18 paragraph and therefore denies them.

19 78. Paragraph 78 contains Plaintiff's characterization of his action or legal
20 conclusions and not allegations of fact for which an answer is necessary. To the
21 extent an answer is required to paragraph 78, Defendant denies the allegations.

22 79. Paragraph 79 contains Plaintiff's characterization of his action or legal
23 conclusions and not allegations of fact for which an answer is necessary. To the
24 extent an answer is required to paragraph 79, Defendant denies the allegations.

25 **TENTH CLAIM FOR RELIEF**

26 80. Defendant incorporates by reference its responses to the allegations in
27 the preceding paragraphs to the same extent the Second Amended Complaint
28 incorporates by reference its allegations in the preceding paragraphs of the Second

1 Amended Complaint.

2 81. Deny.

3 82. Deny.

4 83. Deny.

5 84. Paragraph 84 contains Plaintiff's characterization of his action or legal
6 conclusions and not allegations of fact for which an answer is necessary. To the
7 extent an answer is required to paragraph 84, Defendant denies the allegations.

8 85. Deny.

9 86. Deny.

10 87. Paragraph 87 contains Plaintiff's characterization of his action or legal
11 conclusions and not allegations of fact for which an answer is necessary. To the
12 extent an answer is required to paragraph 87, Defendant denies the allegations.

13 **ELEVENTH CLAIM FOR RELIEF**

14 88. Defendant incorporates by reference its responses to the allegations in
15 the preceding paragraphs to the same extent the Second Amended Complaint
16 incorporates by reference its allegations in the preceding paragraphs of the Second
17 Amended Complaint.

18 89. Defendant is without sufficient knowledge or information sufficient to
19 form a belief as to the truth of each and every allegation contained in this
20 paragraph and therefore denies them.

21 90. Paragraph 90 contains Plaintiff's characterization of his action or legal
22 conclusions and not allegations of fact for which an answer is necessary. To the
23 extent an answer is required to paragraph 90, Defendant denies the allegations.

24 91. Defendant is without sufficient knowledge or information sufficient to
25 form a belief as to the truth of each and every allegation contained in this
26 paragraph and therefore denies them.

27 92. Paragraph 92 contains Plaintiff's characterization of his action or legal
28 conclusions and not allegations of fact for which an answer is necessary. To the

1 extent an answer is required to paragraph 92, Defendant denies the allegations.

2 93. Defendant is without sufficient knowledge or information sufficient to
3 form a belief as to the truth of each and every allegation contained in this
4 paragraph and therefore denies them.

5 **PRAYER FOR RELIEF**

6 94. Defendant denies each and every allegation contained in Plaintiff's
7 "Prayer for Relief" (Paragraphs 94.a. through 94.m.).

8 **DEMAND FOR JURY TRIAL**

9 95. Paragraph 95 contains Plaintiff's characterization of his action or legal
10 conclusions and not allegations of fact for which an answer is necessary. To the
11 extent an answer is required to paragraph 95, Defendant denies the allegations.

12 **SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSES**

13 Defendant asserts the following affirmative defenses. These defenses are
14 asserted on information and belief, and Defendant reserves the right to seek leave
15 to amend this Answer to allege additional affirmative defenses after an opportunity
16 for investigation and discovery. By alleging the defenses below, Defendant does
17 not in any way concede that it has the burden of proof or persuasion on any of
18 these issues.

19 **First Affirmative Defense**

20 **(Failure to State a Claim)**

21 1. The Second Amended Complaint, and each purported claim for relief
22 contained therein, fails to state a claim upon which relief can be granted.

23 **Second Affirmative Defense**

24 **(Lack of Subject Matter Jurisdiction)**

25 2. The Second Amended Complaint, and each purported claim for relief
26 contained therein, is barred because this Court lacks subject matter jurisdiction
27 over each and every cause of action alleged in the Second Amended Complaint.

28 **Third Affirmative Defense**

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(Inconvenient Venue)

3. The Second Amended Complaint, and each purported claim for relief contained therein, is barred because this Court is an inconvenient venue for this action. 28 U.S.C. § 1404(a).

Fourth Affirmative Defense

(Statute of Limitations)

4. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, to the extent it seeks recovery for claims that are beyond the applicable statutes of limitations.

Fifth Affirmative Defense

(Complied With Record Keeping Requirements)

5. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that Defendant complied with all recordkeeping requirements of the FLSA and California law.

Sixth Affirmative Defense

(Estoppel)

6. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, by the doctrine of estoppel.

Seventh Affirmative Defense

(Waiver)

7. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, by the doctrine of waiver.

Eight Affirmative Defense

(Laches)

8. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, by the doctrine of laches.

Ninth Affirmative Defense**(Unclean Hands)**

9. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that Plaintiff and/or putative class members are guilty of misrepresenting the number of hours they actually worked for the purpose of inflating their claims for back pay and overtime.

Tenth Affirmative Defense**(Not Misclassified)**

10. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that to the extent Plaintiff and/or putative class members were employed by Defendant, they were properly classified under the FLSA and California Labor Code.

Eleventh Affirmative Defense**(Not Employed by Defendant)**

11. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, to the extent that Defendant was not Plaintiff's and/or putative class members' employer.

Twelfth Affirmative Defense**(Individualized Inquiry Required)**

12. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that this case is not proper for resolution as an FLSA collective action or class action due to the highly individualized questions of fact.

Thirteenth Affirmative Defense**(Not Similarly Situated)**

13. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that this case may not be maintained as an FLSA collective action because Plaintiff and/or putative

1 class members are not similarly situated, and Plaintiff cannot adequately represent,
2 the persons whom he purports to represent.

3 **Fourteenth Affirmative Defense**

4 **(Plaintiff and/or Putative Class Members' Acts or Omissions)**

5 14. The Second Amended Complaint, and each purported claim for relief
6 contained therein, is barred to the extent that the alleged wrongful conduct and/or
7 damages, if any, resulted from the acts and/or omissions of Plaintiff and/or putative
8 class members.

9 **Fifteenth Affirmative Defense**

10 **(Mitigation and/or Limitation of Damages)**

11 15. The Second Amended Complaint, and each purported claim for relief
12 contained therein, is barred to the extent that Plaintiff and/or putative class
13 members failed to mitigate their damages.

14 **Sixteenth Affirmative Defense**

15 **(Good Faith)**

16 16. The Second Amended Complaint, and each purported claim for relief
17 contained therein, is barred, in whole or in part, on the grounds that Defendant
18 acted in good faith and had reasonable ground for believing that its policies and
19 practices complied with their obligations under the FLSA, California law. Any
20 alleged failure to pay any owed wages was the result of a good faith dispute as to
21 whether wages were due and owing.

22 **Seventeenth Affirmative Defense**

23 **(Plaintiff Paid for Work Performed)**

24 17. The Second Amended Complaint, and each purported claim for relief
25 contained therein, is barred, in whole or in part, on the grounds that Plaintiff and/or
26 putative class members have received full payment for all work performed.

Eighteenth Affirmative Defense**(Compliance)**

18. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that the responding party was in compliance with regulations, administrative ruling or letters, and industry standards.

Nineteenth Affirmative Defense**(No Injury/De Minimis)**

19. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that the time for which Plaintiff seeks compensation is *de minimis* and Plaintiff did not suffer any damage as a result of the conduct alleged against Defendant.

Twentieth Affirmative Defense**(Offset)**

20. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that Plaintiff has received payments to which he was not entitled, which payments offset any entitlement he now seeks, in whole or in part.

Twenty-First Affirmative Defense**(Not “Work” Under FLSA)**

21. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that the hours Plaintiff claims to have worked as overtime are not “hours worked” within the meaning of the FLSA and applicable Wage Orders of the Industrial Welfare Commission.

Twenty-Second Affirmative Defense**(No Knowledge or Consent)**

22. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part, on the grounds that to the extent Plaintiff engaged in any uncompensated work, it was without the knowledge or consent of Defendant, and was performed in a manner designed to conceal it from Defendant.

Twenty-Third Affirmative Defense**(Not Entitled to Liquidated Damages)**

23. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part on the grounds that in the event Defendant is found liable, Plaintiff and/or putative class members are not entitled to recover liquidated damages because the acts or omissions giving rise to the action were in good faith and that Defendant had reasonable grounds for believing that the acts or omissions were not a violation of any applicable law.

Twenty-Fourth Affirmative Defense**(Unintentional)**

24. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part because to the extent Plaintiff and/or any putative class members did not receive all wages upon termination, the alleged failure to pay such wages was not willful. To the extent Plaintiff and/or any putative class members claim that wages were not paid, such wages were the subject of a good faith dispute.

Twenty-Fifth Affirmative Defense**(Independent Contractors)**

25. The Second Amended Complaint and each claim for relief therein fail because Plaintiff and/or members of the putative class were at all times independent contractors, making the California Labor Code and Minnesota

Statutes inapplicable.

Twenty-Sixth Affirmative Defense

(No Injury)

26. The Tenth Cause of Action is barred, in whole or in part, on the grounds that Plaintiff and/or putative class members suffered no injury as a result of the alleged failure to provide accurate wage statements.

Twenty-Seventh Affirmative Defense

(No Liability For Hours Not Worked)

27. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part to the extent that the hours claimed to have been worked by Plaintiff and/or putative class members are not “hours worked” within the meaning of applicable Wage Orders of the Industrial Welfare Commission.

Twenty-Eighth Affirmative Defense

(Lack of Causation)

28. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part because to the extent Plaintiff and/or putative class members have suffered damages, which Defendant denies, such damages were not caused by Defendant, but were instead caused by the acts and/or omissions of others and/or by circumstances for which Defendant is not legally responsible.

Twenty-Ninth Affirmative Defense

(Avoidable Consequences)

29. The Second Amended Complaint, and each purported claim for relief contained therein, is barred, in whole or in part under the doctrine of avoidable consequences in that Plaintiff failed to take advantage of preventative or corrective opportunities provided by the facilities affiliated with Defendant.

Thirtieth Affirmative Defense**(No Irreparable Harm)**

30. Plaintiff's requested relief is not appropriate, in whole or in part, on the grounds that injunctive relief is not appropriate because there is no risk of irreparable harm.

Thirty-First Affirmative Defense**(Adequate Remedies at Law)**

31. Plaintiff's requested relief is not appropriate, in whole or in part, on the grounds that even if Plaintiff were to prevail, Plaintiff would have adequate remedies at law.

Thirty-Second Affirmative Defense**(No Common Questions)**

32. Class certification is inappropriate on some or all of Plaintiff's claims because common questions of fact and law do not predominate, and there are highly individualized questions of fact that would be present.

Thirty-Third Affirmative Defense**(No Attorneys' Fees)**

33. Plaintiff's claims for attorneys' fees are barred because Plaintiff has not alleged facts, and Defendant has not engaged in conduct, that entitles Plaintiff to an award of attorneys' fees or costs.

Thirty-Fourth Affirmative Defense**(Punitive Damages Unconstitutional – Interstate Commerce)**

34. Plaintiff's claims for punitive, exemplary, and/or statutory damages are barred because the imposition of punitive, exemplary, or statutory damages under the circumstances of Plaintiff's claims and/or the applicable punitive, exemplary, and/or statutory damages statutes are unconstitutional in that they impose an undue burden on interstate commerce.

Thirty-Fifth Affirmative Defense**(Punitive Damages Unconstitutional – Due Process)**

35. Plaintiff's claims for punitive, exemplary, and/or statutory damages are barred because the imposition of punitive, exemplary, or statutory damages under the circumstances of Plaintiff's claims and/or the applicable punitive, exemplary, and/or statutory damages statutes violate Defendant's right to due process.

Thirty-Sixth Affirmative Defense**(Punitive Damages Unconstitutional – State Claims)**

36. Plaintiff's claims for punitive, exemplary, and/or statutory damages under state law are barred because the provision of California law allowing the award of punitive, exemplary, and/or statutory damages and the substantive rules and procedures and standards determining whether or not to award them and if so, in which amount violates Defendant's right to due process and equal protection under the law, under the United States and California Constitution.

Thirty-Seventh Affirmative Defense**(No Fraud, Oppression, or Malice)**

37. Plaintiff's claims for punitive, exemplary, and/or statutory damages are barred because Plaintiff's claims do not sufficiently state facts supporting a finding that Defendant acted with fraud, oppression, or malice, and at no time did Defendant act with fraud, oppression, or malice.

Thirty-Eighth Affirmative Defense**(No Unfair or Fraudulent Conduct)**

38. Defendant cannot be liable for any violation of the Unfair Competition Law, Cal. Business & Professions Code § 17200, *et seq.* because its actions towards Plaintiff and/or the putative class were not unfair, fraudulent, or likely to mislead the putative class or the public. Defendant's conduct and dealings with the Plaintiff and/or the putative class was lawful and authorized by applicable

state and federal statutes, rules and regulations, and such actions, conduct and dealings were carried out in good faith and for legitimate business purposes.

Thirty-Ninth Affirmative Defense

(No Punitive Damages)

39. Plaintiff's claim for punitive damages is barred as Plaintiff cannot and has not alleged facts sufficient to establish punitive damages and such damages cannot be awarded given the lack of any involvement of any officer, director, or managing agent of Defendant in any alleged actions.

Fortieth Affirmative Defense

(Superiority)

40. Class action certification is inappropriate on some or all of Plaintiff's claims because proceeding as a class action is not superior to other procedures available to the putative class members.

Forty-First Affirmative Defense

(Typicality)

41. Class action certification is inappropriate on some or all of Plaintiff's claims because Plaintiff's claims are not typical of the putative class she seeks to represent.

Forty-Second Affirmative Defense

(Numerosity)

42. Class action certification is inappropriate on some or all of Plaintiff's claims because Plaintiff cannot meet the numerosity requirement.

Forty-Third Affirmative Defense

(Duplicative)

43. Some of the causes of action alleged in the Second Amended Complaint are barred because they are duplicative, and Plaintiff and/or members of the putative class are not entitled to double or triple damages.

Reservation of Rights

Defendant has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendant therefore reserves the right to assert additional affirmative defenses in the event discovery indicates that they may be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment in its favor and requests as follows:

1. That the Court deny class or collective certification;
2. That the Court deny declaratory and injunctive relief;
3. That Plaintiff, or anyone Plaintiff purports to represent, take nothing by virtue of this action;
4. That Defendant be awarded its fees and costs, including reasonable attorneys' fees and expert fees, in defense of this action as allowed by law; and
5. That the Court grant Defendant such other relief as the Court deems just and appropriate.

Dated this 4th day of April, 2016.

GORDON & REES LLP

/s/ ANTHONY J. BELLONE

By: _____

Debra Ellwood Meppen
Anthony J. Bellone
Attorneys for Defendant
Field Nation, LLC